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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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EXAMINER

QM02/0503

PELHART UNIT

PAPER NUMBER

3742
DATE MAILED:

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Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
09/419,664

Applicant(s)
Faries et al

Examiner
Joseph Pelham

Group Art Unit
3742



☐ Responsive to communication(s) filed on _____

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1-34 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☒ Claim(s) 15-17 and 31-33 is/are allowed.

☒ Claim(s) 1, 4, 7, 18, 21, 22, and 34 is/are rejected.

☒ Claim(s) 2, 3, 5, 6, 8-14, 19, 20, and 23-30 is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of References Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 4

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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Claim Rejections - 35 USC § 102

1. Claim 34 is rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 5653905 to McKinney.
2. Claim 34 is rejected under 35 U.S.C. 102(e) as being anticipated by either U.S. Patent 5986239 to Corrigan et al or U.S. Patent 5977520 to Madson et al.

The examiner urges that a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

Claim Rejections - 35 USC § 103

3. Claims 1, 4, 18, and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 5977520 to Madson et al in view of U.S. Patent 3879171 to Tulis.

Referring to Figures 1-3, Madson et al discloses a chamber 14 for receiving a medical item, temperature sensors 54, 62, and conducting heat from a first wall 16 to secondary walls 18. Madson et al does not explicitly disclose control means facilitating entry of a desired temperature for the chamber.

Tulis discloses, at Figure 4, control means 240 facilitating entry of a desired temperature for the chamber. See also column 2, lines 1-7. It would have been obvious to one of ordinary skill in the art to adapt the control means of Tulis to the device of Madson et al to automate its operation.

4. Claims 7 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Madson et al in view of Tulis, as applied to claims 1, 4, 18, and 21 above, and further in view of U.S. Patent 4419568 to van Overloop.

The claims differ from Madson et al in view of Tulis in calling for temperature control for a plurality of chambers. Van Overloop discloses, at Figures 1-3 and column 2, line 37, through column 4, line 36, temperature control for a plurality of warming chambers. It would have been obvious to one of ordinary skill in the art to adapt the control means of van Overloop to the warming device of Madson et al in view of Tulis to enhance uniformity of temperature where items are more desirably heated individually. Moreover, either Tulis or van Overloop immediately suggests the desirability of individual heating chambers for medical items.

Allowable Subject Matter

5. Claims 2, 3, 5, 6, 8-14, 19, 20, and 23-30 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
6. Claims 15-17 and 31-33 are allowed.

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Conclusion

7. The prior art made of record and not relied upon is considered pertinent to Applicant's disclosure. The prior art cited below should be considered in conjunction with the previously cited prior art when responding to this action.

U.S. Patents 3015582, 2885526, and 3193339 disclose pertinent heating devices and a storage device with plural pivoting chambers.

Any inquiry concerning this communication should be directed to Joseph Pelham at telephone number (703) 308-1709, or fax (703) 308-7764.

A handwritten signature in black ink, appearing to read 'J. Pelham', is written over the printed name.

Joseph Pelham
Primary Patent Examiner
Art Unit 3742

JP
April 28, 2000